REMARKS

Claims 1-24 are pending. Claims 1-24 are rejected. Claims 22-24 are objected to.

Claim Objections

Claims 22-24 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 1, 11, and 21 relate to a poly (urethane-urea) material formed employing compounds comprising (a) at least one polyol compound, (b) at least one amine compound, and (c) an isocyanate compound. Applicants respectfully traverse this objection. In claims 22-24, the specific polyol compound is (a) a hydroxyl capped polyol and/or a hydroxyl chain extender and the specific amine compound (b) is an amine capped polyether and/or an amine chain extender and amine compound. Therefore, claims 22-24 clearly limit claims 1, 11 and 21.

Claim Rejections – 35 USC § 112

Claims 1-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner contends that sag and runoff properties are only taught for the restored (cured) rail seat in applicant's disclosure. (See page 3 lines 3-14). Applicants respectfully traverse this rejection.

Page 3, lines 12-14 states that the poly(urethane-urea) material (in an uncured state) is substantially sag resistant and exhibits excellent pseudoplasticity. The poly(urethane urea) is in an uncured state during the contouring step (a cured polymeric material cannot be contoured) and during the curing step (which follows the contouring step) of the rail seat restoration operation. It also provides that the poly(urethane-urea) material can maintain its shape (without sag or runoff) during the "rail seat restoration operation" which includes both the contouring and curing steps. Page 3, lines 21-28, says that the gel time of the poly(urethane-urea) material is extremely short. It further states that this (the short gel time of the uncured poly(urethane-urea) material) allows for placement and retention of the rail seat components on the repair site without substantial run-off of the polymeric material from the repair site. It also provides that the poly(urethane-urea) material can be maintained in a fixed position (in an uncured state) on the

surface of the damage rail seat during the course of the rail seat restoration procedure. The rail restoration procedure includes (a) applying an uncured polymeric material comprising poly (urethane-urea) material to the damaged rail seat, (b) contouring the uncured polymeric material, and (c) curing the contoured damaged rail seat. In each of steps (a)-(c) the uncured polymeric material is substantially sag resistant and is maintained in a fixed position without runoff. In step (b) this allows contouring the polymeric material applied to the damaged rail seat on the upper surface of the concrete rail tie to form a contoured damaged rail seat having substantially the original dimensions of an undamaged rail seat. Clearly, if the uncured polymeric material is sag resistant and does not runoff the rail seat in steps (a) and (c), it also is sag resistant and does not runoff the rail seat in step (b).

Page 3, line 29-30 provides that the Set Time of the polymeric material can also be sufficient to permit contouring of the rail seat in situ (on the uncured polymeric material) in the repair area (during the rail seat restoration operation as per steps (a)-(c) above). Therefore, contouring is conducted on the uncured poly(urethane-urea) material which is stated above to be sag resistant and which does not undergo substantial run-off from the repair site. Claim 6 further provides that the Set Time of the polymeric material is sufficient for contouring the polymeric material applied to the damaged rail seat in situ (on the uncured polymeric material) without requiring the use of non-ambient heat. Contouring cannot be performed on a cured polymeric material because it is incapable of being shaping or forming same into substantially the same original dimensions of the rail seat. This contouring step also cannot be conducted on an uncured polymeric material which is not sag resistant or which will run-off from the repair site.

The rail seat restoration operation or procedure as defined above, and in amended claims 1-24, includes the following steps: (a) applying an uncured polymeric material comprising a substantially sag resistant poly (urethane-urea) material to the damaged rail seat located on the upper surface of said concrete rail tie, wherein the uncured poly (urethane-urea) material is maintained in a fixed position on the damaged rail seat without runoff therefrom during restoring of the damaged rail seat, (b) prior to forming the restored cured rail seat,_contouring the uncured

polymeric material applied to said damaged rail seat on the upper surface of the concrete rail tie in situ to form a contoured damaged rail seat having substantially the original dimensions of an undamaged rail seat, and (c) curing the contoured damaged rail seat under ambient temperature and pressure conditions to form a restored cured rail seat.

Therefore, applicants have clear support for the polymeric material being "substantially sag resistant" and "without substantial runoff' during and after the contouring step, and prior to and during the curing step, since these are steps which are part of the overall restoration operation. Sag and runoff properties are taught for all of the steps leading up to the formation of a cured and restored rail seat in applicant's disclosure. Contouring can only be conducted on an uncured polymeric material not on a cured polymeric material as posited by the Examiner.

This rejection under 35 U.S.C. 112, first paragraph, should therefore be withdrawn.

Claim Rejections – 35 USC § 103

Claims 1-21 are rejected under 35 USC 103(a) as being unpatentable over US Pat. No. 7,138,437 to Giorgini et al. ("Giorgini") in view of US Pat. No. 4,295,259 to Rhodes et al. ("Rhodes") as evidenced by US Pat No. 5,173,222 to Young et al. ("Young").

Applicants traverse the above rejection based on Giorgini, Rhodes and Young for the reasons set forth in prior responses and for the reasons set forth below.

Regarding claims 1, 11, and 21, the Examiner states that Giorgini teaches a method for repairing structural members by using a polyurethane material (polyurethane-urea) to repair the structural members. Giorgini is based on the premise that polyurethane materials can repair defects which create "cavities" in structural members such as wooden rail ties, doors, windows, furniture, and cabinets. Giorgini can even repair cavities which have been formed within concrete structures. The void area formed in these structural members which is filled with the polyurethane material of Giorgini is a cavity which must have the

ability to surround and support the polyurethane material during the curing process. Contouring of the polyurethane material does not occur in the repair process of Giorgini because it is not self-supporting. Thus, the polyurethane material of Giorgini must be surrounded and supported by the walls of the cavity into which it have been introduced.

Sag resistance and runoff are not a problem in the repair operation of Giorgini because these dilemmas do not arise when a polymeric material is put into an enclosure which is supported during the curing step. A polyurethane per se is not sag resistant and will runoff a surface which does not surround and support it during curing. Giorgini would not be motivated to employ a polymeric material which is sag resistant and does not runoff a non-supporting surface since the defects described above that Giorgini actually repairs do not require the presence of these properties. Giorgini does not relate to restoring a damaged rail seat on the upper surface of a concrete rail tie as described above which is conducted without the use a cavity which can surround and support a non-self supporting polyurethane material.

The Examiner states that Giorgini teaches a polyurethane material comprising Part A which is a polyol component and part B which is an isocyanate component. He also asserts that Giorgini goes on to teach that a polyamine "gelling agent" can be added to Part A. This gelled polyurethane is then filled into a defect which surrounds and supports it as defined above. The polyurethane material is cured to repair a rail tie. The cured polyurethane, not the uncured polyurethane material, is alleged by the Examiner to form a sag resistant polymeric repaired article.

Applicants poly (urethane urea) material is not a polyurethane composition as described above by Giorgini. Giorgini describes its polyurethane as a foamable polyurethane composition (see col.2, line 37) which is filled into a defect which is a cavity and surrounds and supports the foamable polyurethane composition as defined above. Applicants claimed poly (urethane-urea) material is not foamable. Applicants have determined that polyurethanes, including

foamable polyurethanes, cannot be contoured and cured in an unsupported manner so that they can be employed to restore damaged rail seats on concrete rail ties to the original dimensions of an undamaged rail seat in the manner claimed herein. They are not sag resistant and they do not maintain their shape without substantial runoff from the concrete rail tie during said contouring and curing of the polymeric material.

Applicants have previously provided a Declaration Traversing Cited References according to 37 CFR 1.132 by Robert M. Loomis, a co-inventor of the subject patent application. Applicants have now provided a second such Declaration from Mr. Loomis ("Second Loomis Declaration"). Mr. Loomis has been working in tie rail restoration for over 10 years for the assignee of the above-referenced patent application, the Willamette Valley Company ("WVC"). Mr. Loomis has also been working in restoring of damaged rail seats located on concrete rail ties for WVC for more than 5 years.

Mr. Loomis and the WVC have experimentally attempted to employ polyurethanes per se to restore damaged rail seats on concrete rail ties to the original dimensions of the undamaged rail seat in the manner claimed herein. Mr. Loomis and the WVC have concluded that such polyurethanes are not sag resistant and that they do not maintain their shape without substantial runoff from the concrete rail tie during said contouring and curing of the polymeric material. Therefore, polyurethanes, including the foamable polyurethanes of Giorgini, cannot be employed to restore a damaged rail seat since they are not sag resistant and are not able to maintain their shape without substantial runoff from the concrete rail tie during the contouring and curing of the damaged rail seat.

The Examiner has stated that the final product of Giorgini will have urea linkages in a polyurethane foam composition. This is because Giorgini adds a polyamine as a "gelling agent" to the polyurethane foam to form these urea linkages and produce a modified polyurethane material. Just because a modified polyurethane, and particularly the foam modified polyurethane of Giorgini, has urea linkages does not make it a poly (urethane-urea) material which can restore a rail seat on a concrete rail tie in the manner described in applicants' claims. As stated in the

Second Loomis Declaration, the foamed modified polyurethanes to which an amine gelling agent have been added as described in Giorgini cannot be employed to restore a damaged rail seat since they are not self-supporting, and furthermore, they are not sag resistant and are not able to maintain their shape without substantial runoff from a concrete rail tie during the contouring and curing of the damaged rail seat. Instead, Giorgini requires a cavity having walls that surround and support their polyurethane foam material during the curing process (Giorgini doesn't conduct a contouring step) . If one attempted to contour and cure the Giorgini modified polyurethane in the manner claimed by applicants, which Giorgini does not suggest or teach, the polymeric material would collapse and runoff.

As set forth in the Second Loomis Declaration, the gelling agent's function in Giorgini is not to form the claimed poly (urethane-urea) material. Instead, its purpose is to prevent environmental water at the substrate/material interface from reacting with the isocyanate component. In formulating terms, the gelling agent is described as a surface-acting agent to provide a particular property or a desired surface effect. In other words, at the surface/material interface the polyamine reacts quickly to form a 'skin' or cured surface and prevents further isocyanate-water interaction by decreasing the diffusion rate of water by density of the material. This surface-acting effect is very common in foam formulations and in particular at the atmospheric/material surface where amines, both polyamine and amine catalysts, form skins or very dense surfaces over a foam. So, the mere use of polyamines to thicken the material surface and prevent the isocyanate component from further reacting with environmental moisture does not materially change the composition of the polyurethane foam material of Giorgini. Having "urea linkages" in a polyurethane composition does not mean that Giorgini has formed a poly (urea-urethane) material, much less a poly (urea-urethane) material as described in claims 1-24. As in the case of polyurethanes per se, the modified polyurethane of Giorgini is not self-supporting, and is not sag resistant and is not able to maintain its shape without substantial runoff from a concrete rail tie during the contouring and curing of a damaged rail seat (even though doing so is not suggested or taught by Giorgini).

As stated in the Second Loomis Declaration, applicants have incorporated polyamines in their formulation to actually create a polyurea network throughout the material not just an outer skin. This in fact facilitates the formation of a poly (urethane-urea) material. This poly (urethane-urea) network prevents the material from sagging and flowing during contouring due to the presence of its three dimensional network structure. The consequence is that the claimed method is not directed to just a surface reaction as in Giorgini. Applicants' method as claimed enhances the formation of a contoured damaged rail seat which has substantially the original dimension of an undamaged rail seat. In this way, the subject polyurethane-urea material can be dispensed on a surface without running off. Contrarily, the Giorgini material is not sag resistant, will not maintain its shape, but instead will simply roll off the surface while forming a surface skin as described above due to the presence of environmental water. Contouring of the polyurethane material of Giorgini is not taught or suggested because it is not contemplated in order to accomplish the purposes stated in Giorgini. This is why Giorgini can only function within a confined space or cavity which retains and supports it until it can form a fully cured polyurethane tie hole plug even though it does not have sufficient structural integrity as a stand-alone entity during the curing process. In Giorgini, the foam polyurethane material is not sag resistant because it doesn't have to be sag resistant. Instead, the spike hole or defects described in Giorgini act as a mold during the formation of the foam polyurethane. Giorgini is not self-supporting and the polyurethane foam is not capable of being contoured to form a contoured damaged rail seat having substantially the original dimensions of an undamaged rail seat because it is not sag resistant.

The addition of strength enhancers are required by Giorgini to give the cured polymeric material of the repaired article enough strength in order to prevent deformation during a train pass. No strength enhancers are required to be added to the polymeric material of the claimed method for restoring a damaged rail seat located on a concrete rail tie to form a restored cured rail seat. This is further evidence that the polyurethane material of Giorgini is not the claimed self-supporting poly(urethane-urea) material.

It would not be obvious to apply the teachings of Giorgini to include the repair of the rail seat portion of a concrete rail tie assembly as Giorgini does not stand for, as asserted by the Examiner, repairing polyurethane based components in a rail tie assembly in the manner claimed by applicants. Contrary to the statement made by the Examiner, rail ties themselves are not typically made of concrete, they are typically made of wood. Also, as opposed to the statement made by the Examiner, concrete rail ties do not contain spike holes, much less spike holes which are repaired using the process of Giorgini. Therefore, neither polyurethane nor any other polymeric material can be added to repair spike holes (which don't exist) in concrete rail ties. The claimed restoration of a rail seat is not conducted using a polyurethane foam which is not sag resistant or which will not undergo runoff as described in Giorgini. Therefore, it would not have been obvious for one having the ordinary skill in the art to apply Giorgini's process to rail seats. Even though rail seats can be made of polyurethane, it would not have been obvious to apply the teachings of Giorgini to include the repair of the rail seat portion of the rail tie assembly as claimed by applicants. As the rail seats in the subject claimed method and rail tie defects in the Giorgini-abstract are repaired in a totally different manner, using a self-supporting poly(urethane-urea) in one case and using a non-self-supporting modified polyurethane in the other case, it would not have been obvious for one having the ordinary skill in the art to apply Giorgini's process to rail seats.

With respect to claim 1, the Examiner admits that Giorgini does not expressly teach restoring the damaged rail seat by curing the polymeric material under ambient temperature and pressure conditions. Rhodes teaches a method of repairing spike holes in a wooden railway tie which is similar to Giorgini but which is totally different than amended claim 1. Rhodes adds its polyurethane foam to a spike hole in a wooden rail tie which acts as a mold for the formation of the cured polymeric material. The repaired articles formed from the processes disclosed in Giorgini and Rhodes do not have the claimed sag resistance nor the ability to maintain its shape without substantial run-off. Just because Rhodes can be cured under ambient conditions doesn't mean that it functions in a manner similar to that which is claimed by applicants. Contouring of the polyurethane material of Rhodes is not taught or suggested because it is not contemplated in order to accomplish the purposes stated in Rhodes. This why

can only function within a confined space or cavity which retains and supports it until it can form a fully cured polyurethane tie hole plug even though it does not have sufficient structural integrity as a stand-alone entity during the curing process. In Rhodes as in Giorgini, the foam polyurethane material is not sag resistant because it doesn't have to be sag resistant. Instead, the spike hole or defects described in Rhodes act a mold during the formation of the foam polyurethane. Rhodes is not self-supporting and the polyurethane foam is not capable of being contoured to form a contoured damaged rail seat having substantially the original dimensions of an undamaged rail seat because it is not sag resistant. Again, the formation of a cured foam polyurethane in a spike hole or defect is not the claimed method of forming a rail seat on a concrete which includes the step of forming a contoured damaged rail tie and a restored rail seat which are both sag resistant without substantial runoff during both the contouring and curing steps.

The uncured polymeric material of the process disclosed in Giorgini and Rhodes does not have the claimed sag resistance and they do not maintain the shape without substantial run-off as the combination of Giorgini and Rhodes applies a totally different process and materials as those disclosed in the instant application. Even though the processes disclosed in Giorgini and Rhodes both are for rail assemblies, one having the ordinary skill in the art would have not have had to determine that the repaired material of Giorgini and Rhodes had adequate sag resistance without substantial runoff (which they do not have) for the reasons set forth above. Giorgini and Rhodes are filling a confined space and the claimed method is restoring a damaged rail seat.

Giorgini and Rhodes are analogous art with respect to each other because they repair or alter a railroad tie assembly with a polyurethane foam material. However, neither Giorgini or Rhodes is motivated to repair a rail seat on a concrete rail tie, much less on a concrete rail tie per se, at ambient temperature and pressure employing a polymeric material which is sag resistant and will not undergo runoff under such ambient formation conditions for the reasons set forth above.

The Examiner admits that with respect to claims 1, 11, and 21, the combination of Giorgini and Rhodes do not expressly teach wherein the polyurethane material is to be used to cure defects in rail seats. The Examiner contends that, with respect to claims 1, 11, and 21, Young provides motivation that one having the ordinary skill in the art would look to repair defects in a rail tie and rail seat with a similar repairing compound such as epoxy.

Applicants employ a poly (urethane-urea) material which is clearly not taught by the prior art cited. The subject process, as stated above, forms a free-standing contoured damaged rail seat and a free-standing curable rail seat without the use of auxiliary support or the use of confining void tie holes or defects to facilitate the curing process. The Examiner has cited Young stating that it provides motivation that one having the ordinary skill in the art would look to repair defects in a rail tie and rail seat with an epoxy. As previously stated, the state of the art for rail seat repair by others than the assignee of the above-reference application, such as Young, involve the use of epoxy materials which cure slowly. Young describes problems in repairing abraded ties quickly enough to limit hold up to freight traffic to an acceptable time, and in restoring badly abraded rail seats to their original dimensions. Young also states (column 1, line 63) that "if freight trains are run even slowly over the freshly repaired rail seats, if the epoxy is still in a plastic state, it will be pumped out thus upsetting the true level of the rail seat...".

Young's solution to the above problem requires using equipment such as clamps for confining the epoxy material, and applying heat and pressure to the confined epoxy material. However, the claimed method employs a poly(urethane-urea) material which does not require confining equipment, nor does it need to employ heat or pressure. Even when epoxy is applied in a relatively thin layer, the cure time can take 12 to 36 hours at typical ambient temperatures. This is completely unacceptable from a train operator's point of view. If the trains are running even slowly over the freshly repaired rail seats, and if the epoxy is still in a plastic state, it will run-off. This will disrupt the true level of the rail seat, causing cavities to form in

the rail seat material. This also results in improper bonding to the abrasion plate. All of these factors will lead to subsequent failure of the rail seat.

Young is able to speed up the repair process by confining the epoxy material using confinement equipment, and then having to apply heat and pressure (all of which are cumbersome and difficult to handle). Our claims define technology which is a substantial improvement over Young for the following reasons: 1) there is no confinement equipment which is required; 2) there is no pressure which is required; 3) there is no heat which is required; and 4) the claimed poly(urethane-urea) material meets the requirements which are not met by epoxy materials such as durability, strength, adhesion, gel time, compressive loading, elongation, speed, ease of application, etc.

Furthermore, the polyurethane material described by Giorgini (and Rhodes and Young) is only sag resistant after (not during) the curing stage is completed. Since the claimed poly(urethane-urea) has sag resistant and runoff prevention properties when it is initially dispensed, the need for applying plates, clamps and other containment equipment to enclose and confine the repair material during curing is alleviated. Thus, a fully restored rail seat article is produced by the claimed method without requiring auxiliary containment equipment which would be needed if an epoxy or polyurethane material were employed.

Therefore, it would not have been obvious to one having the ordinary skill in the art to apply similar repair compositions for rail tie assembly repair to rail seat repair in order to standardize the material needed to repair a rail system. It would also have not been obvious to use the teachings of Giorgini and Rhodes, in order to repair rail seats with a poly(urethane-urea) composition in the manner claimed by applicants.

Regarding claims 2-3 and 12-13, the Examiner admits that Giorgini does not teach: (1) wherein the damaged rail seat is restored without requiring the use of non-ambient heat and (2) wherein the damaged rail seat is restored without requiring the use of non-ambient pressure. The Examiner states that Rhodes teaches wherein the polyurethane is curable at an outdoor ambient temperature and pressure. Rhodes does not teach claims 2-3 and 12-13 for the reasons set

forth above with respect to Rhodes regarding claims 1 and 11. Maintaining sag resistant and the shape of a poly(urethane urea) material without substantial runoff without the use of

ambient temperature and pressure cannot be accomplished using the polyurethane foam of Rhodes. The claimed method and Rhodes are totally different and cannot be compared.

Regarding claims 4-5 and 14-15, for the reasons set forth above, Giorgini does not teach wherein a poly (urethane-urea) material which has a gel time that can be less than 5 seconds, or less than 1 second, and which is used in the contouring and restoration of a damaged rail seat. Maintaining sag resistant and the shape of the foam polyurethane material without substantial runoff at the gel times set forth above cannot be accomplished using the polyurethane foam of Rhodes for the reasons set forth above. The claimed method and Rhodes are totally different and cannot be compared.

Regarding claims 6 and 16, Giorgini does not teach wherein the Set Time of the polymeric material is sufficient for contouring the restored rail seat in situ without requiring the use of non-ambient heat. Maintaining sag resistant and the shape of the foam polyurethane material without substantial runoff at set time set forth above which is sufficient for contouring the polymeric material cannot be accomplished using the polyurethane foam of Rhodes for the reasons set forth above. The fact that someone understands that conducting rail repairs in a manner that minimizes the need for additional machinery or laborers doesn't mean that can actually provide a method which can accomplish this result. The claimed method and Rhodes are totally different and cannot be compared.

The Examiner admits that regarding claims 7-10 and 17-20, the combination of Giorgini and Rhodes do not expressly teach: (1) wherein the rail ties having the restored rail seat maintains the gauge of a rail assembly under dynamic operating conditions; (2) wherein the modulus of the restored rail seat is increased to a level which will resist compressive loading and maintain the rail gauge of the rail assembly; (3) wherein the Elongation of the restored rail seat is at least about 10%; and (4) wherein the Shore D (24 hour) Hardness of the restored rail seat is at least about 65. The Examiner states that Rhodes teaches that polyurethane

would lead to a rail assembly system that does not deform or fatigue due to temperature or pressure changes. Again, as described above, Rhodes specifically deals with polyurethane foam used in a confined spike hole which is not a suitable material for the repair of rail seats on concrete ties. A polyurethane foam will clearly undergo substantial deformation and fatigue due to pressure and temperature when in an unsupported and unconfined environment. The use of strength enhancers, hydrophobic enhancers, and impact absorption enhancers, as described in Rhodes, will not overcome the fact that foam polyurethanes in an unsupported and unconfined environment will undergo substantial deformation and fatigue. Rhodes does not teach the claims 7-10 and 17-20 for the reasons set forth above. The claimed method and Rhodes are totally different and cannot be compared.

Maintaining sag resistant and the shape of the foam polyurethane material without substantial runoff at set times set forth above which is sufficient for contouring and curing the polymeric material cannot be accomplished using the polyurethane foam of Rhodes. One of ordinary skill in the art would not have obviously recognized that the claimed properties of the restored rail seat would have naturally flowed from the claimed process and the claimed materials used in the claimed process...because they don't. Giorgini in view of Rhodes does not provide the same process and the same materials as the claimed invention for the numerous reasons set forth above. One of ordinary skill in the art would not obviously recognize, since all things are not equal (process and materials), that the process of Giorgini and Rhodes would produce a restored rail seat having the claimed properties.

Regarding claims 22-24, Giorgini teaches a polyurethane including at least one polyol compound and an isocyanate. However, claims 22-24 relate to a poly(urethane-urea) material, as described in detail above. This poly(urethane-urea) material includes (a) a hydroxyl capped polyol and/or a hydroxyl chain extender, (b) an amine capped polyether and/or an amine chain extender, and (c) an isocyanate compound. The polyurethane materials of Giorgini, Young and/or Rhodes do not comprise (a) a hydroxyl capped polyol and/or a hydroxyl chain extender, (b) an amine capped polyether and/or an amine chain extender, and (c) an isocyanate compound. Therefore, new claims 22-24 patentably distinguish over Giorgini, Young and/or Rhodes.

Regarding the rejections described above, if a proposal for modifying the prior art in an effort to attain the claimed invention causes the art to become inoperable or destroys its intended function, then the requisite motivation to make the modification would not have existed. *See In re Fritch*, 972 F.2d at 1265 n.12 ("A proposed modification [is] inappropriate for an obviousness inquiry when the modification render[s] the prior art reference inoperable for its intended purpose."). Therefore, the rejection of claims 1-24 is clearly erroneous for the reasons set forth above.

Regarding the rejections described above, "It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." In re Wesslau, 353 F.2d 238, 241 (CCPA 1965); see also Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 796 F.2d 443, 448-49 (Fed. Cir. 1986). Therefore, claims 1-24 are allowable.

For the foregoing reasons, reconsideration and allowance of claims 1-24 of the application as amended is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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